

JC07 Rec'd PCT/PTO 29 AUG 2005 #3



Docket No.: 0690-0123PUS1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Peter OAKLEY et al.

Application No.: 10/534,637

Confirmation No.: 1067

Filed: May 12, 2005

Art Unit: N/A

For: METHOD FOR YIELD IMPROVEMENT IN
GLYPHOSATE-RESISTENT LEGUMES

Examiner: Not Yet Assigned

LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Subsequent to the filing of the above-identified application on May 12, 2005, attached hereto is an English translation of the International Preliminary Examination Report (Form PCT/IPEA/409) that should be made of record in the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or to credit any overpayment to Deposit Account No. 02-2448 for any

Application No.: 10/534,637

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additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Dated: August 29, 2005

Respectfully submitted,

By 

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Attachment(s)

Translation

PATENT COOPERATION TREATY

PCT/EP2003/012483



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference M/46082-PCT	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/012483	International filing date (day/month/year) 08 November 2003 (08.11.2003)	Priority date (day/month/year) 12 November 2002 (12.11.2002)
International Patent Classification (IPC) or national classification and IPC A01N 57/20		
Applicant BASF AKTIENGESELLSCHAFT		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 4 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 10 May 2004 (10.05.2004)	Date of completion of this report 04 November 2004 (04.11.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/012483

I. Basis of the report

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

☒ the international application as originally filed.

☒ the description, pages 1-15, as originally filed,
pages _____, filed with the demand,
pages _____, filed with the letter of _____,
pages _____, filed with the letter of _____.

☒ the claims, Nos. 1-6, as originally filed,
Nos. _____, as amended under Article 19,
Nos. _____, filed with the demand,
Nos. _____, filed with the letter of _____,
Nos. _____, filed with the letter of _____.

☐ the drawings, sheets/fig _____, as originally filed,
sheets/fig _____, filed with the demand,
sheets/fig _____, filed with the letter of _____,
sheets/fig _____, filed with the letter of _____.

2. The amendments have resulted in the cancellation of:

☐ the description, pages _____

☐ the claims, Nos. _____

☐ the drawings, sheets/fig _____

3. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

4. Additional observations, if necessary:

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/EP 03/12483

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	3, 6	YES
	Claims	1, 2, 4, 5	NO
Inventive step (IS)	Claims		YES
	Claims	1-6	NO
Industrial applicability (IA)	Claims	1-6	YES
	Claims		NO

2. Citations and explanations

This report makes reference to the following document cited in the international search report:

D1: RAMSDALE B K ET AL: 'Glyphosate tank-mixed with insecticides or fungicides', RES. REP. NORTH CENT. WEED SCI. SOC. (59, 280-83, 2002), XP001180180, University North Dakota State

Document D1 discloses mixtures that contain a glyphosate derivative and pyraclostrobin (Headline) or azoxystrobin (Quadris). According to D1, the combination of glyphosate derivative and pyraclostrobin has a synergistic effect on wheat, barley, oats and millet. Consequently, D1 appears to be prejudicial to the novelty of claims 1, 2, 4 and 5 (PCT Article 33(2)). The subject matter of claims 3 and 6 appears to be novel over D1.

The present application should be considered to address the problem of finding mixtures that can be used to increase the yield of leguminous plants having modified resistance against glyphosate and its esters and salts.

The solution proposed in the application consists in the use of glyphosate and strobilurins, in particular

\ pyraclostrobin.

However, the synergistic properties of compositions that contain glyphosate derivatives and pyraclostrobin are already known from D1.

Moreover, D1 discloses synergistic mixtures that contain a glyphosate derivative and propiconazol. Consequently, D1 suggests the subject matter of claims 1-6 (PCT Article 33(3)).

According to D1, the mixture of glyphosate derivative and azoxystrobin has an antagonistic rather than a synergistic effect. Consequently, in view of D1, not all strobilurin derivatives appear to be suitable for solving the problem in question (PCT Article 33(3)).

Formal objections

- In view of formula II on page 7 of the description, the term "a *glyphosate derivative II*" in claims 1, 4 and 5 appears to be misleading.
- At present, the application does not meet the requirements of PCT Rule 5.1(a) because the description does not cite D1.